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7 THE BUCKLE, INC.

NOTE: CHANGES MADE BY THE COURT

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 DESIGN COLLECTION, INC., a
12 California Corporation,

13 Plaintiff,

14 v.

15 JINWON APPAREL, INC., a California
16 Corporation; THE BUCKLE, INC., a
17 Nebraska Corporation; JUN & MIN,
18 INC., a California Corporation;
19 FRENZI, a Texas business entity of
form unknown; and DOES 1-10,
inclusive,

20 Defendants.
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Case No.: 2:14-CV-2707-AB-FFMx
Hon. Frederick F. Mumm

**[~~PROPOSED~~] STIPULATED
PROTECTIVE ORDER**

[DISCOVERY MATTER]

GOOD CAUSE STATEMENT

The Court may enter a protective order upon a showing of good cause. *Phillips v. G.M. Corp.*, 307 F.3d 1206, 1209 (9th Cir. 2002) (Rule 26(c)). Here, there is good cause for the entry of this protective order. Plaintiff has filed a copyright infringement claim against, *inter alia*, defendant The Buckle, Inc. (“Buckle”).

The Parties anticipate producing certain information and documents in this matter that is competition-sensitive, including confidential customer information and sales information. The use of such confidential information should be limited to this litigation. It should not be disclosed to the public as disclosure would be harmful to the Parties and their customers. The purpose of this Protective Order is to provide a means for limiting access to and use and disclosure of such confidential documents or information that is produced in this action. Any unauthorized disclosure of confidential documents or information in violation of this Order may be subject to discipline by the contempt powers of this Court.

Based on the foregoing, the parties stipulate and request that the Court ORDER as follows:

1. Any party to this litigation and any third party shall have the right to designate as “Confidential Material” and subject to this Order any information, document, or thing, or portion of any document or thing that (a) contains trade secrets, competitively sensitive technical, marketing, financial, sales or other confidential business information, (b) contains private or confidential personal information, (c) contains information received in confidence from third parties, or (d) the producing party otherwise believes in good faith to be entitled to protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure (“Confidential Material”). Any party or third party covered by this Order that produces or discloses any Confidential Material shall mark it with the following or a substantially similar legend: “CONFIDENTIAL – SUBJECT TO PROTECTIVE

1 ORDER.”

2 2. Any party and third party shall have the right to designate as “Attor-
3 neys’ Eyes Only Material” and subject to this Order any information, document, or
4 thing, or portion of any document or thing that contains highly sensitive business
5 or personal information, the disclosure of which is highly likely to cause signifi-
6 cant harm to an individual or to the business or competitive position of the desig-
7 nating party. Any party to this litigation or third party covered by this Order that
8 produces or discloses any Attorneys’ Eyes Only Material shall mark the same with
9 the following, or a substantially similar, legend: “HIGHLY CONFIDENTIAL –
10 ATTORNEYS’ EYES ONLY – SUBJECT TO PROTECTIVE ORDER.”

11 3. Any Confidential or Attorneys’ Eyes Only Material produced in a
12 non-paper medium (*e.g.*, videotape, audiotape, computer disc) may be so
13 designated by labeling the outside of such non-paper medium, as appropriate, with
14 the following, or a substantially similar, legend: “CONFIDENTIAL – SUBJECT
15 TO PROTECTIVE ORDER ” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
16 EYES ONLY – SUBJECT TO PROTECTIVE ORDER.” In the event a receiving
17 party generates any electronic copy, hard copy, transcription, or printout from any
18 such designated non-paper medium, that party, and all persons subject to this
19 Order, must treat each copy as the original was designated and label it in a manner
20 consistent with this Order.

21 4. All designations of Confidential Material and Attorneys Eyes Only
22 Material shall be made in good faith and in accordance with Fed. R. Civ. P. 26
23 (c)(1)(G).

24 5. All Confidential Material and Attorneys’ Eyes Only Material shall be
25 used by the receiving party solely for purposes of the prosecution or defense of this
26 action, shall not be used by the receiving party for any business, commercial,
27 competitive, personal or other purpose, and shall not be disclosed by the receiving
28 party to anyone other than the persons set forth in paragraphs 6 and 9, unless and

1 until the restrictions under this Order are removed either by written agreement of
2 counsel or Court Order. Counsel may, however, give advice and opinions to his or
3 her client solely relating to this action based on an evaluation of Attorneys' Eyes
4 Only Material, provided that such advice and opinions shall not reveal the content
5 of such Attorneys' Eyes Only Material except by prior written agreement of
6 counsel or Court Order.

7 6. Confidential Material and the contents of Confidential material may
8 be disclosed only to the following individuals under the following conditions:

9 a. Outside counsel retained by the parties for this case and in-
10 house counsel for the parties working on this case;

11 b. Outside experts or consultants retained by outside counsel for
12 purposes reasonably related to the scope of an expert's work in this case, provided
13 they have signed a non-disclosure agreement in the form attached hereto as Exhibit
14 A;

15 c. Secretarial, paralegal, clerical, duplicating and data-processing
16 personnel working under the direct supervision of outside counsel, in-house
17 counsel, outside experts, or outside consultants described in paragraphs 6.a and
18 6.b;

19 d. The Court, jury, court reporters, and court personnel;

20 e. Any deponent who is shown or examined about any
21 Confidential Material or Attorneys' Eyes Only Material, if it appears that the
22 witness authored or received a copy of it, was involved in the subject matter
23 described therein, or is employed by the party who produced the Confidential
24 Material or Attorneys' Eyes Only Material, or if the producing party consents to
25 such disclosure;

26 f. Vendors retained by or for the parties to assist with respect to
27 pretrial discovery, trial, or hearings, including but not limited to court reporters,
28 litigation support personnel, jury consultants, persons preparing demonstrative and

1 audiovisual aids for use in court, in depositions, or mock jury sessions, as well as
2 their staff, stenographic, and clerical employees whose duties and responsibilities
3 require access to such materials;

4 g. Attorneys, managers, and executives of parties that are business
5 entities and who are required to participate in decisions regarding this lawsuit; and

6 h. An individually named Plaintiff, with disclosure only to the
7 extent reasonably necessary for the named Plaintiff's participation in the case as
8 determined in good faith by Plaintiffs' counsel, provided the named Plaintiff has
9 signed a non-disclosure agreement in the form attached hereto as Exhibit A.

10 7. Material designated as Attorneys' Eyes Only Material may be
11 disclosed only to (a) outside counsel of record and paralegals for the receiving
12 party working on this case, (b) vendors retained by or for the parties to assist with
13 respect to pretrial discovery, trial, or hearings, including but not limited to court
14 reporters, litigation support personnel, jury consultants, persons preparing
15 demonstrative and audiovisual aids for use in court, in depositions, or mock jury
16 sessions (c) other persons as to whom counsel for the producing party agrees in
17 advance or (d) as ordered by the Court, provided that such other persons have
18 signed a non-disclosure agreement in the form attached hereto as Exhibit A.

19 8. Confidential and Attorneys' Eyes Only Material shall be used only by
20 individuals permitted access to it under paragraphs 6 or 7. Confidential and
21 Attorneys' Eyes Only Material, copies thereof, and the information contained
22 therein, shall not be disclosed in any manner to any other individual until and
23 unless (a) outside counsel for the party asserting confidentiality consents to the
24 disclosure or waives the claim of confidentiality, or (b) the Court orders the
25 disclosure.

26 9. With respect to depositions during which there has been disclosure of
27 Confidential or Attorneys' Eyes Only Material, the party or third party designating
28 the material as Confidential or Attorneys' Eye Only Material shall have until

1 twenty-one (21) days after receipt of the deposition transcript within which to
 2 inform all parties that portions of the transcript are to be designated as Confidential
 3 Material or Attorneys' Eyes Only Material, which period may be extended by
 4 agreement of the parties. During the 21-day period, no deposition transcript
 5 containing Confidential Material or Attorneys' Eyes Only Material, and no
 6 contents of the Confidential Material or Attorneys' Eyes Only Material contained
 7 in the transcript, shall be disclosed to anyone other than (a) the individuals
 8 described in paragraphs 6.a, 6.b, 6.c, 6.d, and 6.f above with respect to
 9 Confidential Material, (b) the individuals described in paragraph 7 with respect to
 10 Attorneys' Eyes Only Material, and (c) the deponent. Upon being informed that
 11 certain portions of a deposition are to be designated as Confidential or Attorneys'
 12 Eyes Only, all parties shall immediately cause each copy of the transcript in its
 13 custody or control to be appropriately marked and limit disclosure of that transcript
 14 in accordance with preceding Paragraphs of this Order.

15 10. Each person who signs the non-disclosure agreement attached hereto
 16 as Exhibit A shall be subject to the jurisdiction of this Court for purposes of any
 17 proceedings relating to compliance with or violation of this Order.

18 11. The recipient of any Confidential or Attorneys' Eyes Only Material
 19 subject to this Order shall maintain that material in a secure location, and exercise
 20 at all times due and proper care to ensure the continued confidentiality of the
 21 material.

22 12. A party shall not be obligated to challenge the propriety of a
 23 Confidential or Attorneys' Eyes Only designation at the time made, and failure to
 24 do so shall not preclude a subsequent challenge thereto at any time during this
 25 litigation. If counsel for a party receiving documents or information in discovery
 26 in this case objects to the designation of any of them as Confidential or Attorneys'
 27 Eyes Only Material, the following procedures shall apply:

28 a. Counsel for the objecting party shall serve on the designating

1 party or third party a written objection to such designation, which shall describe
2 with particularity the documents or information in question and state the grounds
3 for objection. Counsel for the designating party or third party shall respond in
4 writing to the objection within seven (7) business days, and state with particularity
5 the grounds for asserting that the document or information is Confidential or
6 Attorneys' Eyes Only Material. If no timely written response is made to the
7 objection, the challenged designation will be deemed withdrawn. If the
8 designating party or third party makes a timely response to such objection asserting
9 the propriety of the designation, counsel shall then confer in good faith in an effort
10 to resolve the dispute. If the designating party does not agree to de-designate the
11 Materials in the designation objections and instead pursues the meet-and-confer
12 process, the parties shall conduct the meet and confer conference required by Local
13 Rule 37 within five (5) calendar days of the designating party's response letter.

14 b. If a dispute as to a designation as Confidential or Attorneys'
15 Eyes Only Material cannot be resolved by agreement, the parties shall present the
16 dispute to the Court as set forth herein. The designating party shall serve the
17 objecting party with a joint stipulation and supporting documents pursuant to Local
18 Rule 37 within seven (7) calendar days of the parties' meet and confer session.
19 The objecting party shall serve the designating party with its portion of the joint
20 stipulation and supporting documents within seven (7) calendar days thereafter.
21 The designating party shall incorporate the objecting party's portion and return the
22 joint stipulation to the objecting party for signature no later than the end of the next
23 business day after receiving the opposing party's portion of the joint statement.
24 Within one (1) court day of the objecting party signing the joint stipulation (or
25 approving the joint stipulation for filing with electronic signature), the designating
26 party shall thereafter file a notice of motion, the joint stipulation, and related
27 motion papers with the Court to seek relief from the Court to uphold any or all
28 designations on documents, testimony or information addressed by the designation

1 objections (the “Designation Motion”). Pending resolution of the dispute, the
2 document or information that is the subject of the filing shall be treated as
3 originally designated.

4 13. Documents containing Confidential or Attorneys’ Eyes Only Material
5 shall not be filed with the Court except as necessary, including without limitation
6 in support of motions and as trial evidence. Any such filings will be made in good
7 faith and not solely for an improper purpose such as harming, harassing or
8 embarrassing another party. All requests to seal documents filed with the Court
9 shall comply with L.R. 79-5.1.

10 14. If the need arises at a hearing to disclose publicly Confidential or
11 Attorneys’ Eyes Only Material, the party seeking to make such disclosure shall do
12 so only after giving notice to the producing party and affording the producing party
13 the opportunity to oppose the disclosure, and only after permitted by the Court.

14 15. To the extent consistent with applicable law, the inadvertent
15 disclosure of Confidential or Attorneys’ Eyes Only Material, regardless of whether
16 it was so designated at the time of disclosure, shall not be deemed a waiver of
17 confidentiality, either as to the specific material disclosed or as to any other
18 material or information concerning the same or related subject matter. The
19 inadvertent disclosure may be rectified by written notification, to counsel for all
20 parties to whom the material was disclosed and within a reasonable time after
21 disclosure, that the material should have been designated as Confidential or
22 Attorneys’ Eyes Only Material. The written notification shall constitute a
23 designation of the material as Confidential or Attorneys’ Eyes Only under this
24 Order.

25 16. When the inadvertent disclosure of any information, document or
26 thing subject to attorney-client, another privilege, or work-product immunity, is
27 discovered by the producing party and brought to the attention of the receiving
28 party, the receiving party’s treatment of such material shall be in accordance with

1 Federal Rule of Civil Procedure 26(b)(5)(B). The inadvertent disclosure shall not
 2 by itself constitute a waiver by the producing party of any claims of privilege or
 3 work-product immunity. Nothing herein, however, herein restricts the right of the
 4 receiving party to challenge the producing party's claim of privilege within a
 5 reasonable time after receiving notice of the inadvertent disclosure.

6 17. In the event any receiving party having possession, custody or control
 7 of any Confidential or Attorneys' Eyes Only Material receives a subpoena, request
 8 for production of documents, or other process or order (the "Request") to produce
 9 such material in another, unrelated legal proceeding, the receiving party shall (1)
 10 give notice of the Request to counsel for the disclosing party or third party that
 11 designated the material as Confidential or Attorneys' Eyes Only Material, (2)
 12 provide a copy of the Request to counsel for the disclosing party or third party, and
 13 (3) cooperate in all reasonable efforts of the disclosing party or third party to
 14 oppose production of the material sought by the Request. The disclosing party or
 15 third party making the designation as Confidential or Attorneys' Eyes Only
 16 Material shall have the burden of defending against the Request. The party
 17 receiving the Request shall ~~be entitled to~~ comply with **its legal obligation relating**
 18 **thereto** ~~it~~ except to the extent the disclosing party or third party making the
 19 Confidential or Attorneys' Eyes Only Material designation obtains an order
 20 modifying or quashing the Request. **(FFM)**

21 18. Nothing contained herein shall preclude a party from (a) using or
 22 disseminating its own Confidential or Attorneys' Eyes Only Material in any way;
 23 (b) disclosing information taken from a document marked as Confidential or
 24 Attorneys' Eyes Only Material to any person who on the face of that document is
 25 shown as having previously received or authored the document or from disclosing
 26 the document itself to said person; (c) disclosing Confidential or Attorneys' Eyes
 27 Only Material of the party that designated the information as such to an officer,
 28 director, or manager of that designating party, or to other witnesses designated by

1 that designating party pursuant to Fed. R. Civ. P. 30(b)(6); (d) disclosing
2 Confidential or Attorneys' Eyes Only Material which, at the time of disclosure,
3 was already in the recipient's possession or available to it from any other source
4 having no obligation to the party or nonparty witness which is the source of said
5 information or which is, or at any time hereafter becomes, available to the public
6 or which, after access is gained through disclosure in this action, is at any time
7 obtained by the recipient from any other person, firm or company having no
8 obligation to or relationship with the source of said information; or (e)
9 intentionally waiving in writing any provision in this Order with respect to any
10 Confidential or Attorneys' Eyes Only Material designated by it without further
11 order of the Court.

12 19. Nothing herein shall foreclose a party from using information
13 (including, but not limited to names and addresses) in Confidential or Attorneys'
14 Eyes Only Material to serve subpoenas on third parties or to add a party or parties
15 to this lawsuit, or to sue a party or parties in a new or different lawsuit for claims
16 of direct infringement, contributory/vicarious infringement or such other claims as
17 the party filing the claims deems appropriate.

18 20. This Order shall not deprive any party of its right to object to
19 discovery by any other party or on any otherwise permissible ground. This Order
20 is being entered without prejudice to the right of any party to move the Court for
21 modification or for relief from any of its terms.

22 21. This Order shall survive the termination of this action and shall
23 remain in full force and effect unless modified by Court Order or the written
24 stipulation of the parties filed with the Court.

25 22. Within sixty (60) days of the termination of litigation between the
26 parties, including conclusion of all appeals and the expiration of time to appeal or
27 seek further review, each party or other person or entity subject to the terms hereof
28 shall assemble and to return to the producing party or third party all original and

1 unmarked copies of documents and things containing Confidential and Attorneys'
2 Eyes Only Material, and destroy, if the producing party so requests, all copies of
3 Confidential and Attorneys' Eyes Only Material that contain or constitute attorney
4 work product as well as excerpts, summaries and digests revealing Confidential
5 and Attorneys' Eyes Only Material; provided, however, that counsel may retain
6 one copy of all transcripts and pleadings, and any exhibits thereto, subject to the
7 provisions of this Order. If destroyed, counsel shall certify to the destruction and
8 provide a copy of the certification to the producing party or third party. To the
9 extent a party requests the return of Confidential and Attorneys' Eyes Only
10 Material from the Court after the final conclusion of the litigation, including the
11 exhaustion of all appeals therefrom and all related proceedings, the party shall file
12 a motion seeking such relief.

13 IT IS SO ORDERED.

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15 Dated: September 24, 2014

/S/ FREDERICK F. MUMM
The Honorable Frederick F. Mumm
United States Magistrate Judge

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DESIGN COLLECTION, INC., a
California Corporation,

Plaintiff,

v.

JINWON APPAREL, INC., a California
Corporation; THE BUCKLE, INC., a
Nebraska Corporation; JUN & MIN,
INC., a California Corporation;
FRENZI, a Texas business entity of
form unknown; and DOES 1-10,
inclusive,

Defendants.

Case No.: 2:14-CV-2707-AB-FFMx

**AGREEMENT TO BE BOUND BY
PROTECTIVE ORDER**

Assigned to the Hon. Andrew Birotte
Jr.

1 I, _____, declare that:

2 1. My address is _____.

3 2. My present employer is _____ and the
4 address of my present employment is _____.

5 3. My present occupation or job description is
6 _____.

7 4. I have carefully read and understood the provisions of the Protective
8 Order that the Court has entered in this case, and I will comply with all of its
9 provisions.

10 5. I will hold in confidence and not disclose to anyone not authorized by
11 the Protective Order any Confidential Material or Attorneys' Eyes Only Material
12 disclosed to me, or any summaries, abstracts, indices, descriptions, discussions, or
13 other documents or communications containing or describing Confidential
14 Material or Attorneys' Eyes Only Material disclosed to me.

15 6. I will limit use of Confidential Material and Attorneys' Eyes Only
16 Material disclosed to me solely for purposes of this case.

17 7. I agree to subject myself to the jurisdiction of this Court for the
18 purpose of any proceedings relating to compliance with or violation of the
19 Protective Order.

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1 8. Within sixty (60) days of the final conclusion of the case, I will return
2 all Confidential Material and Attorneys' Eyes Only Material and summaries,
3 abstracts, and indices thereof which come into my possession, and documents or
4 things which I have prepared relating thereto, to counsel for the party who
5 disclosed the Confidential Material or Attorneys' Eyes Only Material to me.

6 I declare under penalty of perjury that the foregoing is true and
7 correct.

8 Date:

9 _____
10 [Name]